United Nations **AT**

Administrative Tribunal

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ADMINISTRATIVE TRIBUNAL

Judgement No. 945

Case No. 1069: BALDWIN

Against: The United Nations Joint Staff Pension Board

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Mr. Hubert Thierry, President; Mr. Chittharanjan Felix Amerasinghe; Ms. Marsha A. Echols;

Whereas, on 5 February 1999, George Leonard Geoffrey Baldwin, the recipient of a retirement benefit paid by the United Nations Joint Staff Pension Fund (hereinafter referred to as UNJSPF or the Fund) filed an application that did not fulfil all the formal requirements of article 7 of the Rules of the Tribunal;

Whereas, on 27 February 1999, the Applicant, after making the necessary corrections, again filed an application containing pleas which read as follows:

"II. PLEAS

(a) (i) The Tribunal is requested to order the United Nations Joint Staff [Pension] Board to provide me with the actuarial assessment of the equivalent lump sum of my prospective widow's benefit, as requested of the Secretary in my letter of 31 January 1997 (...), effective at the date of my separation from service, 1 October 1996.

ii) The Tribunal is requested to order the United Nations Joint Staff Board to provide me with a copy of the minutes of the meeting in Vienna, on 14 July 1998, at which the Standing Committee rejected my appeal against the

Secretary's decision that I was not entitled to the option of commuting my prospective widow's benefit into a lump sum.

(b) The Tribunal is requested to rescind the decision of the Standing Committee of the [United Nations] Joint Staff Pension Board that I am not entitled to the option of commuting my prospective widow's benefit into its full actuarial equivalent. ...

(c) (i) If the Board has not complied with (a) (i) above, the Tribunal is requested to order the Board to provide me with the assessment of the full actuarial equivalent of my prospective widow's benefit, so that I may decide in conjunction with my wife whether to exercise the option to commute it.

(ii) The Tribunal is requested to order the United Nations Joint Staff [Pension] Board to pay interest from 1 October 1996 in the event that we choose to commute the prospective widow's benefit.

(d) Should the Secretary-General decide to pay compensation instead of the option to commute the widow's benefit, I claim such sum as the Tribunal may determine as being reasonable in the circumstances.

(e) No other relief appears relevant."

Whereas the Respondent filed his answer on 20 May 1999;

Whereas the Applicant filed written observations on 6 June 1999;

Whereas the Applicant submitted an additional document on 12 May 2000;

Whereas the facts in the case are as follows:

The Applicant was a participant in the UNJSPF from 28 September 1987 until his separation from service, on 1 October 1996. At the time of his separation, he was legally married.

On 18 October 1996, the Applicant was given estimates of his benefit options: a full retirement benefit or a reduced benefit and a lump sum not exceeding the actuarial equivalent of one third of the benefit. On 31 January 1997, the Applicant wrote to the Secretary, UNJSPF, and suggested a third option: a full pension under article 28 (g) of the Regulations of the UNJSPF plus "widow's benefit commuted for a lump sum [under articles 28 (g) and 34 (b)]". The

Secretary, UNJSPF, advised the Applicant on 10 February 1997 that the third option was not available to him.

On 17 March 1997, the Applicant wrote to the Secretary, UNJSPF, stating that his reading of the Regulations indicated that he had the option "of commuting the prospective widow's benefit for a lump sum without losing entitlement to the full retirement benefit". He also asked that he be given the "actuarial equivalent of the widow's benefit". The Secretary, UNJSPF, replied on 21 March 1997 advising the Applicant that, in accordance with article 28 (g) (iii), that option was not available to him since the standard annual rate of his benefit was not less than US$300.

On 24 March 1997, the Applicant wrote again to the Secretary, UNJSPF, stating that article 28 (g) (iii) was irrelevant to his case, especially in light of the provisions of article 34 (b). On 11 April 1997, the Secretary, UNJSPF, advised the Applicant that "the *only* reference under article 28 of the Fund's Regulations to commutation of a prospective spouse's benefit [was] that contained in subparagraph (g) (iii), and that "under the Fund's Regulations there is no general right to commute prospective spouse's benefits". He referred the Applicant to Section K of the Administrative Rules of the UNJSPF, in case he wished to request a review by the Standing Committee of the United Nations Joint Staff Pension Board (UNJSPB). In his reply of 14 April 1997, the Applicant indicated that he wished to appeal the decision of the Secretary, UNJSPF, to the "Staff Pensions Committee" and asked for advice how to proceed, and again requested to be provided with the "actuarial value of the widow's benefit".

In his reply of 28 April 1997, the Secretary, UNJSPF, again advised the Applicant to follow the procedure for reviews and appeals outlined in Section K of the Fund's Administrative Rules. Stating that there was no legal basis for the Applicant's request, he refused to authorize the expense of obtaining a hypothetical calculation of the "current actuarial value of [his] wife's potential UNJSPF survivor's benefit".

On 14 June 1997, the Applicant appealed to the Standing Committee.

On 14 July 1997, the Secretary, UNJSPF, informed the Applicant that the Standing Committee had not been able to consider his request for review at its meeting from 30 June-2 July 1997, and that the request for review would be taken up at the next meeting of the Standing Committee.

On 14 August 1998, the Secretary, UNJSPF, informed the Applicant that the Standing Committee had considered his request for review on 14 July 1998 and that it had decided unanimously to "uphold on the merits the Secretary's decision ... based on the clear text of the relevant provisions in the UNJSP Fund's Regulations". The letter was resent on 21 December 1998, following the Applicant's complaint that he had not received the 14 August communication.

On 27 February 1999, the Applicant filed with the Tribunal the application referred to earlier.

Whereas the Applicant's principal contention is:

Under articles 28 and 34 of Regulations and Rules of the UNJSPF, the Applicant has the right to commute his widow's prospective benefit at the standard annual rate of half the retirement benefit. Under article 28 (g) the use of the indefinite article "A" before "benefit" means that any benefit may be commuted, provided it is paid at a standard annual rate. Thus, payment of the widow's prospective benefit is not restricted to benefits payable at a rate of less than US$300, as mentioned in paragraph 28 (g) (iii).

Whereas the Respondent's principal contentions are:

1. The only reference in the Fund's Regulations to commutation of a surviving spouse's benefit is in article 28 (g) (iii), and only in respect of annual benefits of less than US$300, the possibility is accorded of commuting a spousal benefit.

2. There is no general right to commute a spouse's benefit. The reference in article 34 to commuting a spouse's benefit must be read as referring to article 28 (g) (iii), since there are no other references to this possibility in the Fund's Regulations. This interpretation is confirmed in the drafting history of the current provisions (see Report of the UNJSPB to the General Assembly, 10th session (A/2914), Annex II, 1955).

The Tribunal, having deliberated from 5 to 28 July 2000, now pronounces the following judgement:

I. The Applicant requests the Tribunal to order the UNJSPB to provide him with certain documents and to rescind a decision of the Standing Committee of that Board denying him the option of commuting his prospective widow's benefit into a lump sum. As an alternative to the second request, the Applicant asks the Tribunal to order the Board to provide him with a calculation of the full actuarial equivalent of his prospective widow's benefit and to pay interest on that benefit, if it is eventually commuted. Finally, the Applicant claims a reasonable sum, if the Respondent compensates him in lieu of allowing the Applicant the option of commuting his prospective widow's benefit.

II. The response of the Tribunal to these requests is governed by the Regulations and Rules of the UNJSPF, which cannot be reasonably interpreted to support the contention of the Applicant that he may commute his prospective widow's benefit. This conclusion leads to the denial of each of the requests by the Applicant.

III. Article 28 (a) of the Regulations provides a retirement benefit to a participant who meets certain qualifications not at issue here. The benefit is paid at a standard annual rate, based on years of contributory service multiplied by a percentage of final average remuneration. A retirement benefit may be commuted into a lump sum payment by a participant under the conditions stated in article 28 (g). That paragraph begins with the language that a "benefit payable at the standard annual rate may be commuted by the participant into a lump sum *subject to the following limitations* ...." (emphasis added). The limitations link the lump sum payable to the amount of the standard annual rate. The Applicant, whose retirement benefit would be payable at the standard annual rate of US$300 or more, falls under paragraph (g) (i). Paragraph (g) (i) establishes a minimum amount for any lump sum payment in this higher category.

IV. The claims of the Applicant require the Tribunal to consider also Article 34, relating to "Widow's benefit". Subject to certain conditions, which we need not consider, a widow's benefit is payable to the surviving female spouse of a participant provided the union continued until the death of the participant and provided the participant had not commuted his prospective widow's benefit under article 28 or 29 (relating to early retirement benefit).

V. This returns the analyses to article 28, which is the article that applies here. Paragraph 28 (g) (iii) – one of the limitations mentioned in the introductory language of article 28 – concerns small pensions. It applies when the standard annual rate "is less than 300 dollars". In that event the benefit may be commuted into a single lump sum to the extent of its full actuarial value. In addition "if a participant is married, the prospective benefit payable to his spouse may also be commuted at the standard annual rate of such benefit."

VI. The Applicant asks us to read this limitation into article 28 (a). The Tribunal is mindful that, in accordance with its rules of interpretation, the language of a regulation must be read in its "entirety and in context". (Cf. Judgement No. 656, *Kremer and Gordon* (1994)). Given the language and the context of articles 28 and 34, to accept the interpretation of the Applicant would strain the logic of article 28. It also would render article 28 (g) (iii) meaningless, since there would be no need to mention the commutation of a widow's benefit under article 28 (g) (iii) if it were already provided for under article 28 (a).

VII. Moreover, the Tribunal finds that its interpretation coincides with the Fund's explanation to the General Assembly of its recommendations for amendment of the Regulations of the UNJSPF in 1955. That explanation notes that what is now the second phrase in article 28 (g) (iii) was

> "proposed for administrative reasons to avoid, as far as possible, the payment of pensions of very small annual amounts to widows. This is particularly desirable where the staff member himself has taken his benefit in the form of a capital payment and the title to widows' [sic] benefit, unless it is cancelled by payment of a lump sum, may arise at some much later date after contact with the fund has been lost." (A/2914), Annex II, 1955)

VIII. For the foregoing reasons, the Tribunal rejects the application in its entirety.

(Signatures)

Hubert THIERRY
President

Chittharanjan Felix AMERASINGHE
Member

Marsha A. ECHOLS
Member

Geneva, 28 July 2000

Maritza STRUYVENBERG
Executive Secretary